



individual and community ditch association sub-files. Decree at p. iii.

5. The Community of El Rito Ditch Association is comprised of eleven (11) community ditches, including the Acequia Jaral. Decree at p. v.

6. The Acequia Jaral has a priority date of 1799. The Decree has adjudicated rights to use water for the irrigation of 266.2 acres served by the Acequia Jaral. Decree at pp. 4-5.

7. The Decree adjudicates the right to irrigate 9.7 acres to Sub-file No. 32.1. Sub-file No. 32.1 is served by a private ditch, the Jose Romolo Martinez Ditch. Decree at p. 3.

8. The Agreement on Water Rights underlying the Sub-file Order for No. 32.1 was signed by Jose Romolo Martinez. Exhibit A.

9. Mr. Rudy Martinez, whose physical address is State Rd. 554, El Rito, New Mexico, is in physical possession of the Sub-file No. 32.1 lands. Mr. Rudy Martinez is the son of and successor-in-interest to Jose Romolo Martinez.

10. Although there has been no final determination of priority dates for private ditches within the Rio El Rito Stream System, there is credible evidence that the priority date for the Jose Romolo Martinez Ditch is no earlier than 1880. (Dr. John Baxter, "Settlement and Water Use at El Rito," August 1997).

11. The diversion structure by which the Jose Romolo Martinez Ditch diverts water is approximately 1200 feet upstream of the diversion structure for the Acequia Jaral. Exhibit B.

12. In early March, 2002, pursuant to NMSA 1978, § 73-2-47, the El Rito Ditch Association posted notice of a March 18, 2002 community meeting of all ditches to discuss the division of water from the Rio El Rito for the upcoming irrigation season. The Jose Romolo Martinez ditch did not send a representative to the meeting.

13. In early June 2002, Rudy Martinez began to divert the *entire* flow of the Rio El Rito via the Jose Romolo Martinez Ditch. The water was used for irrigation of Sub-file No.

32.1. The water not immediately used for irrigation was stored in a pond. As a result, little, if *any*, water was returned to the Rio El Rito. Any water that did return did so downstream of the Acequia Jaral diversion.

14. Diversion by the Jose Romolo Martinez Ditch resulted in there being no water available for diversion and use by individuals served by the Acequia Jaral.

15. Rudy Martinez does not have a listed telephone number. On June 11, 2002, the officers and commissioners of the El Rito Ditch Association visited Mr. Martinez's property in an attempt to discuss the diversion of water via the Jose Romolo Martinez Ditch. Rudy Martinez refused to discuss his diversion of water and ordered the officers and commissioners off his property at gunpoint, firing two shots at the officers' vehicles. A criminal assault and battery complaint has been registered with the District Attorney of the First District Judicial District of New Mexico by the officers and commissioners of the Ditch Association.

16. Rudy Martinez has continued to divert the entire flow of the Rio El Rito, with intermittent exceptions. The water rights owners who would otherwise divert water from the Acequia Jaral have been deprived of the use of any water for irrigation, domestic or other purposes.

17. Although the Partial Final Decree contemplated appointment of a watermaster, Decree at p. iii, there is no watermaster with jurisdiction over this matter at this time.

18. Rudy Martinez was not contacted before this motion was filed because Mr. Martinez has indicated through his actions that this motion would be deemed opposed. Because Mr. Martinez does not have a listed telephone number nor a post office address in the community of El Rito, a copy of this Motion has been sent to Rudy Martinez at his physical address, State Road 554, Milemarker 13, El Rito, New Mexico 87530 via Fedex Overnight delivery and via Certified Mail to Rudy Martinez, General Delivery, El Rito, NM 87530.

Road 554, Milemarker 13, El Rito, New Mexico 87530 via Fedex Overnight delivery and via Certified Mail to Rudy Martinez, General Delivery, El Rito, NM 87530.


19. Counsel for the State of New Mexico in the Rio Chama adjudication suit, Mr. Ed Newville, has been contacted in connection with this motion and does not oppose this motion.

WHEREFORE, for the reasons stated above, the El Rito Ditch Association and the Acequia Jaral respectfully ask this Court to

1) Issue an order enjoining Rudy Martinez , or any person or entities working in cooperation with him, from further diversion of water into the Jose Romolo Martinez Ditch for the remainder of this year; and

2) For such other relief as this Court deems necessary and proper.

Respectfully submitted,

  
MARY E. HUMPHREY  
Attorney for El Rito Ditch Association and  
Acequia Jaral  
P. O. Box 1574  
El Prado, NM 87529  
(505) 758-2203

**CERTIFICATE OF SERVICE**

I certify that on the 16<sup>th</sup> day of August, 2002 I sent a copy of this Motion to Rudy Martinez via Fedex delivery service at his physical address, State Rd., 554, Mile marker 13, El Rito New Mexico and a copy via United States certified mail to Rudy Martinez, General Delivery, El Rito, NM 87530.

I certify I also mailed copies to the following persons via U.S. mail on the 16<sup>th</sup> day of August, 2002.

Ed Newville, Esq.  
Attorney for  
State of New Mexico  
NM State Engineer  
P. O. Box 25102  
Santa Fe, NM 87504

Special Master Vickie Gabin  
United States District Court  
P. O. Box 2384  
Santa Fe, NM 87504

Darcy Bushnell, Esq.  
Adjudication Clerk  
United States Dist. Court  
600 Lomas Blvd, Suite 610  
Albuquerque, NM 87102

  
Mary E. Humphrey

ORIGINAL  
FILED IN MY OFFICEIN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

SEP 21 1972

E. E. GREESON  
CLERK

STATE OF NEW MEXICO, ex rel.,	)	No. 7941
S. E. REYNOLDS, State Engineer,	)	EL RITO SECTION
Plaintiff,	)	
vs.	)	Sub-File No. 32.1
ROMAN ARAGON, et al.,	)	Jose Romolo Martinez Ditch
Defendants.	)	JOSE ROMOLO MARTINEZ

AGREEMENT ON WATER RIGHTS

The plaintiff, STATE OF NEW MEXICO and the defendant(s)  
JOSE ROMOLO MARTINEZ agree that the  
defendant(s) has the right to divert and use public waters from  
the Rio Chama Stream System, El Rito Section, as follows and that  
a Consent Judgment may be entered in accordance therewith:

Purpose: Irrigation                      Priority:  
State Engineer File No.: None

Point of Diversion: The Jose Romolo Martinez Ditch diverts out of the  
North bank of the El Rito located in the Juan Jose Lobato Grant at  
a position on the New Mexico Coordinate System, Central Zone, where:  
X = 521,610 and Y = 1,943,790.

Location & Amount of Irrigated Acreage:

Part of the Juan Jose Lobato Grant as shown on El Rito  
Hydrographic Survey Map Sheet No. 7, Tract 32.1.

9.7 acres

Duty of Water: Not to exceed 2.8 acre-feet per acre per year  
delivered at the farm headgate.

Defendant: [Signature] [Signature]  
Agency Assistant Attorney General  
Defendant: \_\_\_\_\_ For Plaintiff State of New Mexico  
Address: \_\_\_\_\_ Date: 11/27/71

CONSENT JUDGMENT

THE COURT, having considered the agreement between the parties,  
finds that it has jurisdiction of the parties and the subject matter  
herein and that the defendant(s) has a right to divert and use public  
waters from the Rio Chama Stream System, El Rito Section, as stated  
hereinabove.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant(s)  
water rights are as set forth above, and that the defendant(s) and his  
privies are enjoined from any diversion or use of the public surface,  
and underground waters of the Rio Chama Stream System, El Rito Section,  
except in strict accordance with the rights set forth above or other  
orders of this Court and except for domestic or stock purposes.

DATED this \_\_\_\_\_ day of SEP 21 1972, 1971.

c-72

H. VEARLE FARRER

EXHIBIT "A"

From  
Hydrographic Survey  
Map Sheet 7  
Rio El Rito

